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DOWD, J.

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U.S. DISTRICT COURT
N.D. OF OHIO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

United States of America,	)	
	)	CASE NO. 1:01CR210
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
Hiroaki Serizawa,	)	
	)	
Defendant.	)	
	)	

The defendant Hiroaki Serizawa has filed an extensive motion for a bill of particulars (Doc. No. 15). The government has filed a brief in total opposition to the motion and defendant, with leave, filed a reply.

The first count of the indictment (Doc. No. 1) charges the defendant with engaging in a conspiracy to violate 18 U.S.C. § 371. This count is set forth in ten pages but, in paragraph 12, describes the conspiracy as one to commit certain offenses against the United States:

> (a) to knowingly and with the intent to benefit a foreign government and instrumentality of the foreign government, and without authorization, attempt to steal and steal, and without authorization, appropriate, take, carry away, conceal, alter, destroy, and obtain by fraud, artifice and deception, a trade secret of another entity in violation of Title 18, United States Code, Sections 1831 and 2 (commonly referred to as the "Economic Espionage Act");
>
> (b) to transport, transmit and transfer in interstate and foreign commerce, goods of a value exceeding $5,000, knowing that such goods were stolen, converted and taken by fraudulent means in violation of Title 18, United States Code, Sections 2314 and 2 (commonly referred to as the "Interstate Transportation of Stolen Goods Statute"); and

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(c) to knowingly and willfully make materially false, fictitious and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, in violation of Title 18, United States Code, Sections 1001 and 2 (commonly referred to as the "False Statements Statute").

Paragraphs 25, 29, 30 and 33 of the indictment charge the defendant with specific activity as overt acts to carry out the conspiracy set forth in count one:

25. On or about July 12, 1999, defendant OKAMOTO retrieved the boxes of stolen DNA and cell line reagents and constructs from Dr. B's home and sent them from Cleveland, Ohio by private interstate carriers to defendant SERIZAWA at Kansas City, Kansas.

29. On or about August 16, 1999, defendant OKAMOTO retrieved the stolen DNA and cell line reagents and constructs from defendant SERIZAWA's laboratory at KUMC, in Kansas City, Kansas.

30. On or about August 16, 1999, defendants OKAMOTO and SERIZAWA filled small laboratory vials with tap water and made meaningless markings on the labels on the vials, and defendant OKAMOTO instructed defendant SERIZAWA to provide these worthless vials to officials of the CCF in the event that they came looking for the missing DNA and cell line reagents.

33. On or about September, 1999, defendant SERIZAWA provided a materially false, fictitious and fraudulent statement in an interview of him by Special Agents with the Federal Bureau of Investigation, who were investigating the theft of the DNA and cell line reagents from the CCF, in that defendant SERIZAWA denied receiving any biomedical materials from defendant OKAMOTO; denied any recent telephone, electronic mail or personal contact with defendant OKAMOTO; and denied any knowledge of defendant OKAMOTO having accepted a research position with RIKEN.

The seven-page motion (Doc. No. 15) seeks a bill of particulars with respect to three categories of information: (1) the identities of the alleged co-conspirators, and (2) more specifics with respect to the overt acts in furtherance of the conspiracy, both with respect to Count 1 (Motion, at II A-M); and (3) identification of "DNA and cell line reagents" which underlie Counts 2, 3 and 4 (Motion, at II N-P).

A bill of particulars is not a discovery device. Its purposes have been succinctly set forth by the Sixth Circuit as follows:

> A bill of particulars is meant to be used as a tool to minimize surprise and assist defendant in obtaining the information needed to prepare a defense and to preclude a second prosecution for the same crimes. United States v. Birmley, 529 F.2d 103, 108 (6th Cir.1976); United States v. Haskins, 345 F.2d 111, 114 (6th Cir.1965). It is not meant as a tool for the defense to obtain detailed disclosure of all evidence held by the government before trial. United States v. Kilrain, 566 F.2d 979, 985 (5th Cir.1978), cert. denied, 439 U.S. 819, 99 S.Ct. 80, 58 L.Ed.2d 109, reh'g denied, 439 U.S. 997, 99 S.Ct. 599, 58 L.Ed.2d 670; United States v. Lawson, 688 F.Supp. 314, 315 (S.D.Ohio 1987); United States v. Jones, 678 F.Supp. 1302, 1304 (S.D.Ohio 1988). Further, a defendant is not entitled to discover all the overt acts that might be proven at trial. United States v. Kilrain, 566 F.2d at 985.

U.S. v. Salisbury, 983 F.2d 1369, 1375 (6th Cir. 1993).

The test for determining whether a bill of particulars should issue is whether the indictment is specific enough to inform the defendant of the charges against him, to protect him from double jeopardy, and to enable him to prepare for trial. See United States v. Azad, 809 F.2d 291, 296 (6th Cir.1986), cert. denied, 481 U.S. 1004 (1987); see also United States v. Birmley, 529 F.2d 103, 108 (6th Cir.1976).

The government is not required to supply the names of alleged co-conspirators. "A defendant may be indicted and convicted despite the names of his co-conspirators remaining unknown, as long as the government presents evidence to establish an agreement between two or more persons, a prerequisite to obtaining a conspiracy conviction." U.S. v. Rey, 923 F.2d 1217, 1222 (6th Cir. 1991) (citing cases, including Rogers v. U.S., 340 U.S. 367, 375 (1951)). "As long as the indictment is valid, contains the elements of the offense, and gives notice to the defendant of the charges against him, it is not essential that a conspirator know all other conspirators." Id.

Here the indictment, read in its entirety, is quite specific. It certainly does permit the defendant to discern the nature of the charges pending against him and the time frame in which the alleged acts occurred; it also provides him with adequate information to prepare a defense. The defendant's motion as it pertains to Count 1 is simply an improper attempt to engage in discovery. Therefore, the defendant's motion as it pertains to Count 1 is DENIED.

One portion of the defendant's motion, however, does appear to be well taken, namely, subparagraphs N, O and P pertaining to Counts 2, 3 and 4, respectively, which state:

N) Identify the "ten DNA and cell line reagents" which the government contends consisted of Cleveland Clinic Foundation trade secrets which necessarily form the basis of the charges set forth in Count 2 of the indictment.

O) Identify the "DNA and cell line reagents" which the government contends consisted of Cleveland Clinic Foundation trade secrets which necessarily form the basis of the charges set forth in Count 3 of the indictment.

P) Identify the specific "DNA and cell line reagents" which the government contends consisted of "goods" which necessarily form the basis of the charges set forth in Count 4 of the indictment.

The Court will conduct oral argument on that phase of the defendant's motion on June 21, 2001 at 3:00 p.m. unless the government advises the Court that it will provide voluntarily a bill of particulars as to defendant's requests N, O and P.

IT IS SO ORDERED.

June 14, 2001
Date

David D. Dowd, Jr.
U.S. District Judge